HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32 (2)(b)

Description of the case.

A.O. No. 185 of 2005

Smt. Sanjana Kukreja & others. Appellants

Versus

The New India Assurance Co. another Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 17.10.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 185 of 2005

1. Smt. Sanjana Kukreja w/o Late Sri Anil Kukreja
2. Baby Silvi Kukreja age 8 years d/o late Sri Anil Kukreja.
3. Master Shivek Kukreja age 7 years s/o Late Sri Anil Kukkreja, Claimants 2 and 3 through their mother Smt. Sanjana r/o Mandir Wali Gali, Patel Nagar Delhi, at present Brij Vihar, Amrapali Hotel, Haldwani ..... Appellants

versus

1. The New India Assurance Co. through Divisional Manager, nainital Road, Haldwani
2. Sri Rafiul Rehman s/o Sri Jalilur Rehman r/o Takiya Mubarak Shah Khan, District Rampur

.....Respondents

Sri Z.U. Siddiqui Advocate for the appellants
Sri D.K. Sharma, advocate for respondent no.1
None for respondent no.2

Dated: October 17, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) Heard Sri Z.U. Siddiqui, counsel for the appellants and Sri D.K. Sharma counsel for the respondent no.1.

2) This appeal is against the Award dated 27.1.2005, passed by the Motor Accident Claims Tribunal, Nainital for enhancement of the amount of award.

3) The claimants/appellants preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Anil Kukreja in a

motor vehicle accident. According to the claimants on the fateful day on 12.7.2003 at 6.00 AM the deceased was going to Delhi from Haldwani by Car No. UA 04-5070, when he reached near Police Outpost, Hawalia, P.S. Civil Lines, Rampur, truck No. UP 13-D/7341 dashed the car from opposite direction. According to the claimants the truck involved in the accident was being driven rashly and negligently. The deceased sustained fatal injuries in the accident and he died instantaneously. According to the claimants at the time of accident the deceased was 35 years of age. He was doing business and was earning a sum of Rs. 84,000/- per annum. The claimants claimed a sum of Rs.11,96,000/- as compensation.

4) The respondent no. 1, the New India Assurance company has filed the written statement and submitted that the accident had taken place due to negligence of Santro Car No. UA 04-5070 but the driver, owner and insurer of said car have not been made parties to the claim petition.

5) Respondent no. 2 in his written statement has submitted that the accident did not take place due to rash and negligent driving by the driver of Truck No. UP 13-D/7341. The truck was validly insured with respondent no. 1, who is liable to pay compensation, if any.

6) The claimants examined PW.1 Raghunandan and P.W.2 Smt. Sanjana Kukreja and have filed copy of the post mortem report, F.I.R. site plan and Technical report. Opposite parties examined D.W.1 Samiur Rehman.

8) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving by the Truck driver.

9) So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 35 years. The deceased was Income tax payee and his annual income was Rs.84,377/- The Claims Tribunal held annual income of the deceased at Rs.84,000/- per annum. After deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was held to be Rs.56,000/- Considering the age of the deceased a multiplier of 16 as contemplated under section 163 of the Motor Vehicles Act, was selected and thus the amount of compensation was calculated as Rs.56000 x 16 = Rs.8,96,000. A sum of Rs.5,000/- was awarded towards consortium and a sum of Rs.2,000/- was awarded towards funeral expenses. Thus a total sum of Rs.8,96,000+ 5000 + 2000= Rs. 9,03,000/- was awarded to the claimants.

10) The claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, for enhancement of the amount of compensation. Counsel for the appellants Sri Z.U. Siddiqui has submitted that no interest on the amount of compensation has been awarded by the Claims Tribunal and at least 9% interest should have been awarded to the claimants.

11) After giving thoughtful consideration of the submissions of the appellants, we are of the opinion that the assessment of the income of the deceased by the Tribunal at Rs.84,000/- per annum on the basis of the Income Tax return paper No. 30-C/2 is perfectly justified. After deduction of 1/3 amount the annual dependency of Rs.56,000/- has rightly been calculated. The multiplier of 16 selected by the Claims Tribunal is also justified. Thus the amount of compensation comes to Rs.56000 x 16=

Rs.8,96,000/. The Tribunal also awarded Rs.5,000/- for loss of consortium and Rs.2,000/- for funeral expenses. Thus the amount of compensation i.e. Rs.8,96,000 + 5000+2000 =Rs.9,03,000/- requires no interference.

12) So far as the interest on the amount of compensation is concerned, the Claims Tribunal has erred in not awarding interest on the amount of compensation. Section 171 for the Motor Vehicles Act, reads as under:

Section 171. Award of interest where any claim is allowed- *Where any claims Tribunal allows a claim of compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.*

13) The Apex Court in the case Kaushnuma Begum vs. New India Assurance Company Ltd; (2001) 2 SCC 9 as held as under:

"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf". Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at

the rate of 9% per annum from the date of the claim made by the appellants."

14) It is well settled that the Claims Tribunal is required to award interest on the amount of compensation at the prevalent rate of interest on fixed deposit for one year by the nationalized Banks. In the case Bijoy Kumar Dugar vs. Vidya Dhar Dutta (2006) 3 SCC 242, the Apex Court has held as under:

"MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by MACT and, in our view, the discretion exercised by MACT cannot be said to be inadequate and inappropriate."

15) Award on interest would normally depend upon the bank rate prevailing at the relevant time. In the present case, we are of the opinion that interest at the rate of 6% per annum from the date of filing of the claim petition, shall meet the ends of justice.

16) Accordingly, the appeal is partly allowed. While affirming the compensation awarded by the Tribunal, the appellants are awarded pendente lite and future interest at the rate of 6% per annum on the amount of award.

17) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: October17, 2006

*Dhyani